

ORANSKY, SCARAGGI & BORG, P.C.

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

OPERATIVE PLASTERERS AND)
CEMENT MASONS LOCAL NO. 29)
ANNUITY FUND, WELFARE FUND,)
APPRENTICE TRAINING FUND and)
MARC GALLO, Trustee)
)
Plaintiffs,)
)
v.)
)
INDUSTRIAL CONSTRUCTION OF)
NEW JERSEY, INC.)
)
Defendant.)

Civil Action No.: 2:20-CV-10278

COMPLAINT

1. This is a civil action brought by the following (collectively the “Plaintiffs”):
 - A. Operative Plasterers and Cement Masons Local No. 29 Annuity Fund, Welfare Fund and Apprentice Training Fund (the “Funds”); and
 - B. Marc Gallo, a member of the Board of Trustees (the “Trustees”) and a fiduciary of the Funds.
2. The Defendant is signatory to a Collective Bargaining Agreement (the “CBA”) with the Operative Plasters and Cement Masons Local No. 29 (“Union”) and is obligated to abide by the provisions thereof. In addition, by virtue of making contributions to the Funds, Defendant must adhere to the provisions of the Agreements and Declarations of Trust of said Funds and the Plan documents (collectively the “Plan documents”).

3. This Court has jurisdiction over this matter pursuant to 29 U.S.C. Section 1132(e)(1).

4. Venue is proper with this Court because the Funds are administered within this district. 29 U.S.C. Sect. 1132(e)(2).

PARTIES

5. Plaintiffs are:

A. The Funds, multiemployer annuity and welfare plans maintained pursuant to the CBA and 29 U.S.C. 1002(37)(A); and

B. Marc Gallo, a Trustee of the Funds and a fiduciary of the Funds within the meaning of 29 U.S.C. 1132(a)(3) and thus has standing to sue.

6. The address of the Plaintiffs is 130 Central Avenue, Jersey City, New Jersey.

7. The Defendant is an employer within the meaning of 29 U.S.C. 1002(5).

8. Defendant is legally bound to a Collective Bargaining Agreement with the Union.

9. Upon information and belief, Defendant's address is 833 Ewing Avenue, Lyndhurst, NJ 07071.

STATEMENT OF CLAIM

10. Defendant is signatory to, and has been signatory continuously during all relevant time, to a CBA with the Union.

11. Defendant, pursuant to its CBA has been and continues to be bound to the terms and conditions which govern the administration of the Funds including their Agreements and Declaration of Trusts ("Trust Agreements").

12. The Trust Agreements, CBA and the Employee Retirement Income Security Act (29 U.S.C. 1001, et seq.) authorize the Trustees to take action to recover delinquent contributions. In addition, they authorize the Trustees to recover interest on the delinquent

contributions, liquidated damages in an amount equal to twenty percent (20%) of the total delinquency, and all costs, including audit and attorneys' fees incurred in collecting the delinquency.

13. The Trust Agreements and CBA also obligate Defendant to provide access to Defendant's pertinent employment and payroll records at its place of business in order to determine whether there has been compliance with the obligation to contribute to the Funds.

14. Notwithstanding its obligations pursuant to the CBA, Defendant has failed and refused to pay all of its contributions to the Funds for the period October 30, 2019 through July 31, 2020.

15. The amount due for benefit fund contributions for the period of October 30, 2019 through July 31, 2020 is \$362,274.51.

16. Plaintiffs are authorized by the CBA and 29 U.S.C. § 1132(g) to recover liquidated damages in an amount of twenty percent (20%) of any delinquency, interest on the delinquency at the rate of eight percent (8%) per annum, the cost of any audit, the attorneys' fees and legal costs incurred by the Plaintiffs in connection with this action and any other legal and equitable relief the Court deems appropriate.

17. The liquidated damages due on the delinquency and on untimely payments from October 30, 2019 through July 31, 2020 is equal to \$72,454.90.

18. Interest calculated at eight percent (8%) per annum through the date hereof on the delinquency and on untimely payments from October 30, 2019 through July 31, 2020 is equal to \$6,370.00.

19. The Plaintiffs have incurred substantial accounting fees and attorneys' fees in connection with its audit of Defendant's books and records and to collect unpaid contributions from Defendant.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for Judgment in their favor and that the Court's Judgment include:

- A. \$362,274.51 in delinquent contributions for the period October 30, 2019 through July 31, 2020;
- B. \$72,454.90 in liquidated damages on the delinquency and all untimely payments from October 30, 2019 through July 31, 2020;
- C. \$6,370.00 in interest on the delinquency and all untimely payments from October 30, 2019 through July 31, 2020;
- D. \$459.95 for the costs of suit;
- E. \$90,568.63 in attorneys' fees, expenses and the cost of this action incurred by the Funds, plus any attorneys' fees, expenses and costs incurred in enforcing the Court's Judgment;
- F. an order that includes such additional amounts that accrue through the pendency of this case.

Plaintiffs further pray that the Court grant such other legal and equitable relief as the Court deems appropriate.

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Attorneys for Plaintiffs

Dated: August 11, 2020

By: 
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